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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 OAKLAND DIVISION

18 UNITED STATES OF AMERICA	)	No. CR 12-000792 YGR
	)	
19	)	
20 v.	)	JOINT STATUS MEMORANDUM AND
	)	JOINT REQUEST FOR CONTINUANCE
21 HENRY CERVANTES, et al.,	)	OF THE STATUS CONFERENCE
	)	SCHEDULED FOR APRIL 11, 2013 AND
22 Defendants.	)	ORDER
	)	
23	)	

24  
25 **I. INTRODUCTION**

26 The parties are submitting this joint status memorandum to advise the Court of the  
27 status of this case—and to jointly request a continuance of the April 11, 2013 status

28 JOINT STATUS MEMORANDUM AND CONTINUANCE REQUEST [CR 12-000792 YGR]

hearing for the reasons explained here.

## **II. DISCOVERY AND INITIAL LITIGATION STATUS**

### **Discovery Status**

The Government has produced about 4400 pages of discovery to the Cervantes defense, which, in turn, has requested that the Government produce additional discovery, including laboratory documentation in several areas, and also further materials relating to the conspiracy charges. The Government is in the process of acquiring, reviewing, and producing further discovery. Among other things, this process involves the review of about 40 CDs of material that pertains to a previous case filed against Henry Cervantes and several other defendants in 2000, case 00-CR-654-CRB, the last *Operation Black Widow* case. It appears that the parties agree on certain categories of discovery to be produced in the near term, whereas the parties may dispute whether certain other categories ought to be discoverable (or, if discoverable, at what point in the litigation they should be discoverable). In the event there is a disagreement between the parties concerning discovery, that will be taken in the first instance to Magistrate Judge Cousins.

### **Motion Litigation**

The Cervantes defense has filed a motion to preserve evidence and notes and an initial discovery motion and the Government and filed its position with respect to that Motion. The parties have discussed both motions at length. They are pending before Magistrate Judge Cousins. The parties have resolved a number of issues concerning the preservation of notes and evidence, and continue to confer about discovery.

In addition, the parties have agreed that the Cervantes defense will prepare and file a motion for severance of Mr. Cervantes from the rest of the defendants in this case. While the Government has not agreed, in advance of the filing of the motion, that severance is warranted, both parties agree that there are bases for such a motion to be addressed by the Court relatively early in this litigation. The parties will confer on the timing of such a motion and any reply or opposition thereto, and will submit a proposed hearing date for the Court's consideration.

**Further Discovery And Litigation Will Precede Any Death Penalty Related Submissions Or Presentations By The Defense**

The parties have had several discussions about the management of the part of this case which is focused on Henry Cervantes. The parties have agreed that there is more work to be done with respect to reviewing and obtaining discovery. For its part, the Government wishes to continue to review materials from the prior *Operation Black Widow* case and make disclosures, if any, as appropriate to the defense. For its part, the defense wishes to obtain further institutional records concerning Mr. Cervantes from California institutions, and from the Federal Bureau of Prisons, and makes further progress in its investigation of its case in mitigation. After those tasks are complete, the parties intend to engage in a discussion of whether the Government should seek the death penalty against Mr. Cervantes.

### III. CONCLUSION

**The parties request that the Court delay a further status conference for at least 90 days to permit further progress on the case**

For all of the reasons explained here, the parties are requesting that the Court vacate the April 11, 2013 status conference and continue it until July 11, 2013. This request is not made for the purposes of delay, but rather because of the nature of the case and amount of records still requiring review on the part of both parties. In addition, for continuity of counsel and effective preparation given the discovery demands, the parties and defendant request that time be excluded under the Speedy Trial Act until July 11, 2013. That said, the parties believe that the Speedy Trial Act clock is independently tolled by virtue of the pending motions of the parties.

RESPECTFULLY SUBMITTED AND SO  
STIPULATED.

DATED: April 8, 2013

/s/  
JOHN PHILIPSBORN  
Attorney for HENRY CERVANTES

DATED: April 8, 2013

/s/

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KATHRYN R. HAUN, AUSA  
RANDALL S. LUSKEY, AUSA

1  
2 **ORDER**

3 For good cause shown including the reasons stated in the parties' stipulation with respect to the  
4 status in this case, it is hereby ORDERED that the previously-scheduled hearing on April 11,  
5 2013 pertaining to defendant Henry Cervantes is hereby VACATED and continued until July 11,  
6 2013. The Court further finds that the time between April 11, 2013 and July 11, 2013 is properly  
7 excluded under the Speedy Trial Act in that continuity of counsel and effective preparation  
8 outweigh the right to a speedy trial given the circumstances stated in the parties' joint  
9 submission.

10 IT IS SO ORDERED.

11  
12 DATED: April 10, 2013

  
HON. YVONNE GONZALEZ ROGERS  
United States District Court Judge